Section 8 of the Trade Marks Ordinance 1938 refers to an English registered trade mark and in my opinion such a mark must be regarded in the same way as it would be in England. In England it is a mark deemed to have been registered on the date on which the Patent Office accepted the application. This ante dating may be a privilege or it may be a disadvantage to the owner of the trade mark, but it is an inherent part or qualification of the property the applicant has acquired by registration.

The Certificate of the Controller-General which has been produced under section 8 is by virtue of section 66, *prima facie* evidence of the entry having been made. It is not conclusive evidence. By this I understand that notwithstanding the certificate it is open to any person to shew that the certificate has been issued under a mistake.

But there is no suggestion that the Controller has made any mistake in making out an extract of his register.

The extract must be presumed to be literally correct until the contrary is shewn, and it appears to comply with section 8 of the Ordinance. I was not referred to, nor have I noticed, a rule or form in the Trade Marks Rules 1938 requiring further particulars than are contained in the Controller-General's certificate produced in this case when it is sought to register a trade mark under Part II of the Ordinance. If further particulars were required an appropriate form could be prescribed under section 73.

Mr. Harrison, the Registrar of Trade Marks, an experienced officer of the Board of Trade who has been seconded to this Colony, swore that "the date 9th December mentioned in Exhibit E.J.B.I. is not the date on which entry was made in the register but the date of the application for registration". I understand months may elapse between the application being accepted and the actual registration but section 19 of the English Act like section 29 of the Colony Ordinance directs that when the application for registration is allowed the Registration dates as from the date on which the application was accepted.

The Colony Legislature must, I think, from its mention of the Act of 1938 be presumed to have known that under that Act registration is ante-dated; and consequently that if it did not intend the English date of registration in law to be the date of registration for the purposes of section 8, it would have said so. Otherwise it must have contemplated the certificate under section 9 being invariably misleading and it would have expressely required the production of some other official document shewing the date on which the actual entry in the register was made. This the Legislature has not done either in the Ordinance or by resolution amending the Rules.

For these reasons, in spite of the able argument of the Solicitor-General I think that this trade mark if otherwise in order must be registered.

The application to register should proceed and the formal order will be that the Registrar of Trade Marks proceed to consider the application on the basis that the trade mark was registered in the United Kingdom before the 1st day of February 1939.

There will be no order as to costs.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]

WORLEY, Ag. J.

June 15, 1939.

DEWAN SINGH

v.

M. THYNAPPA LTD. & YEO TECK CHIANG.

[SINGAPORE CIVIL SUIT No. 478 of 1938]

Limitation—Recovery of possession of land—Declaration as to title—nature of possessory right or title under Limitation Ordinance—Limitation Ordinance, Section 25, and Schedule, articles 110 and 112.

A., father of the 2nd Defendant had been in possession of a piece of land without title for about 35 years prior to his death, which occurred on the 22nd July 1926. About a year after the death of A., the 2nd Defendant entered into possession of the land and remained in continuous possession thereof until the 31st March 1938, when he sold and conveyed it to the 1st Defendant. In an action by the administrator of A's estate claiming a declaration that no right or title to the land passed under the conveyance by the 2nd Defendant to the 1st Defendant, and for cancellation of the registration of such conveyance.

Held, upon the preliminary objection that the statement of claim disclosed no cause of action—

(1) That as A's possession was prior to and ceased before 1929 (when Ordinance No. 10 of 1929 was passed), the only effect thereof was to bar the remedy of the true owner, and no title was acquired by A;

(2) That as it was not alleged that the 2nd Defendant entered into possession as representative in interest or trustee of A, there was an abandonment of possession on A's death and the true owner was remitted to his former title;

(3) That as the Plaintiff could only derive title from A, the Statement of Claim disclosed no right or title in him, and his claim for the declaration must fail;

(4) That the 2nd Defendant's possession, although not extending for the statutory period of 12 years, gave him a right as against everyone but the true owner, which was capable of being conveyed by him.

TRIAL OF ACTION.

The Statement of Claim contained the following allegations:

1. That the Plaintiff was the administrator of the estate of one Yeo Kian Guan deceased.
2. That Yeo Kian Guan died on the 22nd July 1926 having been in continuous possession and enjoyment of the land the subject-matter of the action for about 35 years.
3. That the 2nd Defendant, a son of Yeo Kian Guan, without obtaining legal representation to his estate, took possession of the land about one year after his death, and remained in possession until the 31st March 1938.
4. That by an Indenture dated the 31st March 1938 the 2nd Defendant conveyed the land by way of sale to the 1st Defendant.

The Plaintiff claimed a declaration that no right or title to the land passed to the 1st Defendant under the said Indenture, and the cancellation of the registration of the deed in the Registry of Deeds.

The 1st Defendant in his Defence pleaded possession, and also that the Plaintiff's claim was merely consequential to the right and title to the land, which the Plaintiff did not have, and that the action was not maintainable in the absence of any claim for possession by the Plaintiff.

The 2nd Defendant had never been served with the writ.

Koek, for the 1st Defendant, in support of the objection: The action is in substance for recovery of possession of the land, and the Plaintiff can only succeed on the strength of his own title. The nature of a "possessory title" is explained in *Halsbury's* Laws of England (2nd edn.) Vol. 20, p. 471, and *Dart's* Vendor and Purchaser (7th edn.) p. 472; see *In re Atkinson & Horsell's Contract* (1912) 2 Ch. 1, and *Taylor v Twinberrow* (1930) 2 K.B. 16. Section 34 of the Real Property Limitation Act 1833 is similar to Section 25 of the Limitation Ordinance; but this section of the Ordinance was only enacted by way of amendment in 1929.

The position in the Colony prior to this amendment is stated in *Sultan v Lamsah* (1897) 5 S.S.L.R. 61, and *In re Ena Mohamed Tamby deceased* (1933) S.S.L.R. 73 at p. 81; 2 M.L.J. 128. The Statement of Claim shows that at Yeo Kian Guan's death there was an abandonment of possession, so there was no right or title to pass to his administrator; *Rustomji* on Limitation (4th edn.) p. 752 *et seq: Mitra* on Limitation (6th edn.) p. 1704; *Trustees Agency Co. v Short* (1888) 13 A.C. 793. The possession of the 2nd Defendant was not a continuance of Yeo Kian Guan's possession; *Dixon v Gayfere* (No. 1) 51 E.R. 1097.

Aditan for the Plaintiff: the claim is for a declaration only, not for recovery of possession, and the Court may make binding declarations of right even when there is no other cause of action; *Guaranty Trust Co. v Hannay* (1915) 2 K.B. 536. The 2nd Defendant's possession had not ripened into a good possessory title under the Limitation Ordinance; on the other hand, Yeo Kian Guan had at the date of his death an hereditable interest in the land.

Koek in reply: even if 2nd Defendant's interest had not ripened into a good possessory title he had by virtue of possession a right good against everyone except the true owner, which Yeo Kian Guan was not, and such right could be conveyed; *Dart's* Vendor and Purchaser (7th edn.) p. 474; and Plaintiff was not entitled to a declaration that no right or interest passed under the conveyance.

Worley Ag.J.—This is a claim firstly for a declaration that no right or title to a piece of land situated in the District of Tanjong Pagar in the Island of Singapore containing an area of 4 A. IR. OP. and marked on the Government re-survey map as Lot 189 Mukim I (Government Grant No. 80) passed to the first defendant under an indenture dated the 31st day of March, 1938, made between the first and second defendants and registered in the Registry of Deeds on the 2nd of April, 1938, and secondly that the Register kept in the Registry of Deeds in Singapore containing copies or particulars of the registration of this indenture be rectified by cancelling such copy and the memorial thereof and all other entries relating to such registration, and thirdly further and other relief.

The plaintiff claims as the administrator of the estate of Yeo Kian Guan deceased who died on the 22nd day of July, 1926. The statement of claim alleged that the said Yeo Kian Guan was at the time of his death entitled to the land above described and to the houses erected on it by virtue of continuous possession and enjoyment of the same for a period of about 35 years.

It is further alleged that the second defendant is the son of the deceased Yeo Kian Guan and that the second defendant without having applied for or obtained letters of administration to the estate of the deceased took possession of the land and premises about one year or so after the death of the deceased and remained in possession until the 31st of March, 1938, when by the indenture referred to in the first declaration he purported to sell the land and premises to the first defendant. The statement of claim further alleged that the possession of the second defendant was not adverse to the title of the deceased and that the second defendant acquired no right or title by such possession.

The second defendant was not served with the writ but was present in Court at the hearing but took no part in the proceedings, he having parted with his interest to the first defendant.

The defence of the first defendant pleaded firstly that it is in possession either by itself or by its tenants of the land and premises described in the writ and statement of claim. The defence further raised two objections in point of law. Firstly that the plaintiff was not entitled to any of the reliefs claimed in the statement of claim, such reliefs being merely consequential to the right and title to the said land and premises and that the plaintiff has no such right or title. Secondly that the action is not maintainable in the absence of any claim by the plaintiff to recover possession of the said land and premises from the first defendant. As it appeared to me that the decision of the points of law would, if they were upheld, substantially dispose of the whole action I heard argument on these points before hearing any evidence.

Mr. Koek for the first defendant, admitted for the purpose of the argument that all the statements of fact in the statement of claim were true, and contended firstly that the relief sought is merely incidental to the right of ownership of the land involved and cannot be claimed apart from such ownership and, secondly, that the statement of claim disclosed no cause of action as the plaintiff was claiming under a supposed possessory title when he himself is not in possession. He admitted that the former point could be met by amendment of the statement of claim if the plaintiff thought fit to apply for such amendment. Mr. Aditan for the plaintiff however made no such application and, in fact, stated that he had deliberately refrained from pleading that his client was entitled to possession; he relied upon Order 26 rule 5 and the decision in the *Guaranty Trust Company of New York v. Hannay & Coy.*, (1915) 2 K.B. 536. On this point I think it is only necessary to say that, as I understand the rule, the Court will not make any declaratory judgment unless the party asking for it can show that he has an interest in the subject matter of the declaration.

The plaintiff therefore must show by his pleadings what his interest is. That interest can only derive from the deceased and the question then is, what was the nature of deceased's interest in the land and has it passed to his administrator? Mr. Aditan has contended that deceased had a hereditable interest but has not attempted to specify the nature of it.

The nature of a possessory title in England was considered in the cases of *In re Atkinson and Horsall's Contract* (1912, 2 Ch. 1) and *Taylor v. Twinberrow* (1930 2 K.B. 16), and the effect of the views expressed in these cases, which are quoted with approval in the textbooks, is that the Real Property Limitation Act, 1833, does not execute a conveyance to the person in possession but only extinguishes the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of others to eject him.

In considering whether this description of the nature of a possessory title holds good for the Colony it is essential to notice the difference between the Real Property Limitation Act and the Limitation Ordinance of the Colony as it was at the date of the deceased's death in 1926. What is now section 25 of the Ordinance, which extinguishes the right of the person out of possession, was not enacted until 1929 and it has already been held in *In re Ena Mohamed Tamby deceased,* (1933 S.S.L.R. 73) 2 M.L.J. 128 that the amending Ordinance was not retrospective so as to confer a title in respect of adverse possession for a period which had already expired before the Ordinance came into force.

The position of the deceased therefore at the moment of his death was that right and title of the

dispossessed owner was not extinguished but that his remedy was barred, although if he could regain possession he would be remitted to his former title.

What then was the position on the deceased's death? The statement of claim does not specify the date on which the letters of administration to his estate were obtained but it was, I think, stated at the bar that they were obtained some years after the death. But the statement of claim does disclose a gap of about one year between the deceased's death and the subsequent occupation of the land and premises by the second defendant, who is the son of the deceased. It is admitted that the second defendant did not assume possession as the legal personal representative of the deceased and it is not pleaded that he entered as trustee of the deceased's estate. I can therefore see no grounds for the contention that his possession can be tacked on to the possession of the deceased. The statement of claim discloses the fact that on the death of the deceased there was an abandonment of his possession. In such a case when (as in the case before me) the person in possession has not acquired the title to the land, the rightful owner on the abandonment, is in the same position in all respects as he was before the intrusion took place *(Agency Company v. Short* P.C. 13 A.C. 793). In law he was remitted to his former title and could, had he appeared, have ejected the second defendant. I hold therefore that the deceased's interest in the land and premises, the subject of this suit, was terminated at his death and that the pleadings do not dislose any right or title in the plaintiff.

Further, even if the plaintiff were able to show some interest derived from the deceased, he would not, in my opinion, be entitled to a declaration that the indenture between the two defendants passed no right or title to the land in question. It may be that at the date of the indenture the second defendant's length of possession was not sufficient to protect him against the rightful owner but, as a person in possession he had, as against everyone but the rightful owner, an interest which could be inherited, devised or conveyed and could, as against strangers, defend his right of possession until, by force of the Limitation Ordinance as amended in 1929, it had ripened into a right of property. He had therefore an interest or a right, albeit in some respects inchoate, which he could and did transfer to the first defendant.

For these reasons I hold that the objections in law pleaded by the first defendant succeed and the plaintiff's claim must be dismissed with costs to be taxed and paid by the plaintiff to the first defendant.

Preliminary objection allowed and action dismissed with costs.

[APPELLATE CRIMINAL JURISDICTION]

GORDON-SMITH, Ag. J.A., McELWAINE, C.J., POYSER, C.J. (F.M.S.).

A. SAHIB BIN ALI v. REX.

[PENANG CRIMINAL APPEAL No. 10 of 1939]

Private Lottery—Common Gaming Houses Ordinance (Cap. 30).

The Penang Turf Club promoted a private lottery on the result of one of the races held at one of their meetings.

A member of that Turf Club purchased a number of tickets in that lottery, subsequently transferred a sub-share in his lottery tickets to a third person.

Held, that, once any person who was not a member of the club acquired a lottery ticket or a share therein the lottery so far as that person was concerned became a sub-lottery and a public lottery. Even on the basis that the chance given by the member to the third person was a free gift from such member to the third person an offence was committed contrary to Section 4 (d) of the Common Gaming Houses Ordinance and punishable accordingly.

CRIMINAL APPEAL.

Lim Kheng Kooi for the Appellant.

R. Moor (Crown Counsel) for the Crown—Respondent.

The facts and arguments sufficiently appear from the Judgment.

McElwaine, C.J.—The appellant was charged that he did receive money in respect of Penang Turf Club lottery tickets, an offence punishable under section 4(d) of the Common Gaming Houses Ordinance (Chapter 30). On this charge the appellant was acquitted but a further charge was then laid.

"That you between 24.12.38 and 7.1.39 at Penang did assist in carrying on a public lottery contrary to section 4 (c) Chapter 30". The appellant then gave evidence and was convicted.

The appeal might have been conveniently brought as a special case stated and it was argued on the following findings of fact set out in the Magistrate's grounds of judgment.

1. That the Penang Turf Club promoted a Sweep or lottery on the result of one of the races on each of the four race meetings on the 24th and 31st December, 1938 and on the 2nd and 7th January, 1939.